

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Michael Gans

v.

Civil No. 12-cv-279-SM

Amy Gant

ORDER

Re: Document No. 4, Motion to Dismiss

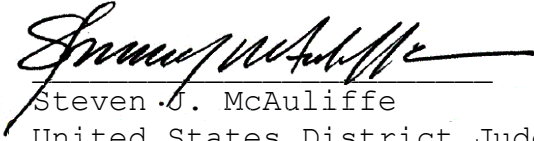
Among other difficulties, the pleadings combine to raise sufficient doubt about defendant's entitlement to dismissal on failure to state a claim grounds as to warrant denying the motion.

First, it is not clear what law the parties consider applicable in this case, or why, although plaintiff seems to be conceding, in his objection, that New Hampshire law applies. The alleged loans were not made here, the notes, to the extent they exist, were not made here, and it does not appear that any breach occurred here.

Next, it is not clear whether either or both of the two alleged earlier loans were reduced to writing or were evidenced by a promissory note. It is also unclear whether any of the earlier loans might be subject to the statute of frauds (RSA 506: 1 and 2), whether negotiable instruments are at issue, and whether any interest or principal was paid during the first 10 years of the various alleged obligations' commencement dates. See Uniform Commercial Code,

Section 3-118. The loan document(s) and note(s) upon which the suit apparently rests have not been proffered, so it is difficult to assess defendant's claims. Accordingly, the motion is denied without prejudice to refiling.

Date: January 28, 2013


Steven J. McAuliffe
United States District Judge